



Report to the Auburn City Council

Action Item
Agenda Item No. 3

City Manager's Approval

To: Mayor and City Council Members
From: Michael G. Colantuono, City Attorney
Date: May 11, 2009
Subject: Quitclaim Deed re Path Adjacent to City Parking Lot Opposite Old State Theater

The Issue

Should the City Council authorize the City Manager to execute a quitclaim deed waiving any City claim to title in a footpath that runs along the easterly edge of the City parking lot on Lincoln Way opposite the Old State Theater to avoid the need to defend a quiet title action?

Conclusions and Recommendation

The City Attorney recommends **BY RESOLUTION**, that the City Council authorize execution of the quitclaim deed as the least costly means to allow the property to obtain a salable title to the land. A cloud on title has arisen because the land was acquired by the owner's predecessor from the City pursuant to "Revenue Ordinances" dating from the early 20th Century which cannot be located.

Fiscal Implications

The staff resources to prepare this item for your review and execute the quitclaim deed are budgeted. Executing the deed will resolve this problem without further expenditure of staff and City Attorney time, thus avoiding litigation and saving money for the City.

Alternatives

The Council may refuse to authorize the quitclaim, in which case the owner will file a quiet title lawsuit, which the City would either need to defend at some expense, or allow to be determined by the City's default, which would impose costs on the property owner needlessly.

Discussion

A pathway runs along the east side of the City parking lot on Lincoln Way opposite the Old State Theater. The City is aware that this strip of land is in private hands and has managed its public utility assets consistently with that fact.

The owner of the land recently died and the attorney settling his affairs has sold the pathway to a property owner on East Placer Street who wants to use it to provide additional pedestrian access to his site, and perhaps signage (any sign application will be processed consistently with the City's sign regulations). The attorney discovered that he could not obtain title insurance to allow sale of the property because the decedent's claim was based on early-20th-Century "Revenue Ordinances" of the City that had not been recorded and could not now be located. To sell the property, the attorney must either file a quiet title action to get a court judgment providing clean title to the land or obtain the City's quitclaim deed – which transfers any right the City might have in the land to the heirs of the decedent and, as the City appears to have no rights, makes that fact unambiguous. As City staff confirms that the City does not own this land or have need of it, there seems to be no reason to put the estate to the expense of a quiet title action and to risk the need to spend City funds to defend the suit. Accordingly, I recommend you approve the quitclaim deed to assist in creating salable title to this land.

Conclusion.

If I can provide further advice or assistance on this subject, please let me know. I will, of course, be available at the May 11th Council meeting to discuss this if necessary.

c: Bob Richardson, City Manager
 Jack Warren, Public Works Director
 Bernie Schroeder, Engineering Division Manager

RESOLUTION NO. 09-

RESOLUTION TO AUTHORIZE THE EXECUTION OF THE QUITCLAIM DEED AS THE LEAST COSTLY MEANS TO ALLOW THE PROPERTY TO OBTAIN A SALABLE TITLE TO THE LAND. THIS LAND IS LOCATED AS A PATHWAY ADJACENT TO THE CITY PARKING LOT OPPOSITE THE OLD STATE THEATER AS SHOWN AS ATTACHED EXHIBIT A.

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize execution of the quitclaim deed as the least costly means to allow the property to obtain a salable title to the land. This land is located as a pathway adjacent to the City Parking Lot opposite the Old State Theater as shown as attached Exhibit A. A cloud on the title has arisen because the land was acquired by the owner's predecessor from the City pursuant to a "Revenue Ordinances" dating to the early 20th century which cannot be located.

DATED: May 11, 2009

J.M. Holmes, Mayor

ATTEST:

Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a special session meeting of the City Council of the City of Auburn held on the 11th day of May 2009 by the following vote on roll call:

Ayes:

Noes:

Absent:

Joseph G. R. Labrie, City Clerk

RECORDING REQUESTED BY
ALEXANDER L. CONSTANTINO

AND WHEN RECORDED MAIL THIS DEED AND,
UNLESS OTHERWISE SHOWN BELOW, MAIL TAX
STATEMENT TO:

Name: S. Ross Kochenderfer, Jr.

Address: 12210 Herdal Drive, Ste 11

City & State: Auburn, CA

Zip: 95603

Title Order No.

Escrow No.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

QUITCLAIM DEED

THE UNDERSIGNED GRANTOR(s) DECLARE(s)

DOCUMENTARY TRANSFER TAX IS \$ 0.00

☐ unincorporated area ☒ City of Auburn

Parcel No.

☐ computed on full value of property conveyed, or

☐ computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

City of Auburn

hereby REMISE, RELEASE AND FOREVER QUITCLAIM to
The Estate of Robert Elder

the following described real property in the city of Auburn

county of Placer

, state of California:

See attached legal description described as "Exhibit A"

Dated April 15, 2009

ACKNOWLEDGMENT

State of California)

County of Placer)

Robert Richardson

On April , 2009

before me,

Anne Cooley

(HERE INSERT NAME AND TITLE OF THE OFFICER)

personally appeared Robert Richardson

who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE

(SEAL)

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

NAME

STREET ADDRESS

CITY & STATE

NONJC-012 Rev. 09/01/2008



Martin Dean's
ESSENTIAL FORMS™

QUITCLAIM DEED

S. Ross Kochenderfer

Exhibit A

Legal Description for Placer County Parcel 022-145-024

Crandall Avenue, being a portion of Lot 5 Block 17 of Auburn, CA, as depicted on the Map of Freeman Tract recorded in Book A, Page 3 Placer County Records and described as follows: Beginning at the intersection of the northerly line of Lincoln Way (formerly Broad Street) and the westerly line of Crandall Avenue, **THENCE** northerly along the easterly boundary of the lands of City of Auburn recorded in instrument No. 93-044451 ORPC on June 22, 1993 for the following two courses and distances: N08°15'00"E 200.00' to an iron pin, and N81°45'00"W 10.00' to the easterly boundary of the lands of Robert Elder recorded in Book 765 Page 370 ORPC on January 22, 1955, **THENCE** northerly along the easterly boundary of the lands of Robert Elder N08°35'00"E 108.70' to the southerly boundary of the lands of First Baptist Church recorded in Book 3256 Page 45 ORPC on August 11, 1987, **THENCE** easterly along the southerly boundary of the lands of First Baptist Church N74°13'07"E 9.02' to a 2" pipe fence post, **THENCE** S14°07'06"E 37.64' to a 2" pipe fence post, **THENCE** southerly along the westerly boundary of the lands of City of Auburn described in Book 629, Page 198 ORPC on May 27, 1953 S08°15'00"W 60.00', **THENCE** southerly along the westerly boundary of the lands of Paul Claiborne III recorded in instrument No. 08-0055947 ORPC S08°15'00"W 210.43' to the northerly line of Lincoln Way, **THENCE** westerly along the north line of Lincoln Way S69°51'00"W 15.00' to the point of beginning.

Said parcel contains 0.11 acres (4791 square feet) more or less.



